LEGAL EDUCATION

Multifaceted approach in legal education

ANISUR RAHMAN

LAST month was quite economical to me in terms of bread and butter; attended three seminars and had had delicious foods in all the events. Especially in a government sponsored seminar there were plenty of foods and we couldn't help leaving much of them due to lack of space in our little stomach. Perhaps the authority did not know ours' size. Truly speaking, I was happy to get something from government exchequer with a feeling that I am realizing at least little from my paid income tax as well as value-added tax.

I owe a lot to the Brac University for its generosity. It is ritual, you know, to say something in favour of the topic of a seminar. At least one should not oppose the proposition completely; some time one will not be tolerated, especially in a seminar organised by a donor agency as it costs them a lot. The contacting person may loss the job for his/her wrong choice!

How come a newcomer of this world would know the rule of the fixed- match? There is no Harts' (1961) secondary rule to inform a newcomer too. As a result, I strongly opposed the proposition of the Brac Seminar in favour of clinical/case based legal education. I am grateful that my lunch had not been denied as I was not much obliged to the fixing-rule!

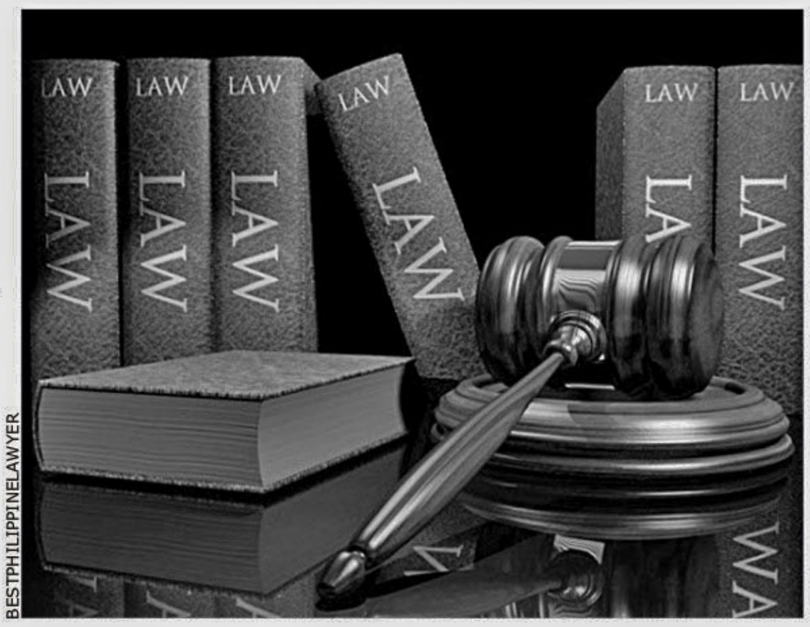
It's time to put my thinking about the legal education into words.

I came across, several times, few communications in this page which advocated for reorganising our legal education as well as for making it more object oriented. In addition, they were advocating for case based method of teaching with a view to prepare our law graduates for the court; to be straight to produce lawyer.

My opposition, with due respect, is on this point of producing lawyers only. Is it the goal of a university to produce good lawyers? I think we are narrowing the field of legal education by setting our objective to produce lawyers. Instead our objective should be of producing good researchers with vast knowledge on genealogy of law.

In brief, the clinical legal education was introduced in USA at the beginning of the 20th century when the realist theory being 'law is something said as well as applied by a judge' came into being. Zerome Frank, who was one of the fathers of the realist school of legal thought, was also one of the proponents of this case based legal education: nothing will be considered as law until it is applied by the judges in the court. Therefore, judges are, in reality, the law maker or law giver.

The British Colonizer, perhaps, had imported this idea of 'judge made' law in India in the guise of



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judicial precedent. Application of the decision of the superior court in Indian jurisdiction, one might say, is a colonial invention. This blind imitation of the decisions of the colonial masters has simply refrained one to question the rationality of their decisions.

I just discover, few months ago, that judicial precedent is one type of codification of law: publication of the decisions of the superior court had served the necessity of codifying law in the colonial India until the formal codification of laws came into being. To be specific, codification of laws had taken place in India by two ways: by establishing law commissions from 1833 onwards and through publication of the decisions of the superior court, i.e. Privy Council. Our legal historians did not do justice, unfortunately, on the latter type of codification.

As a result case based study of law was encouraged to memorise the idea of law or legal interpretation of the colonial judges without any question. It is to remind us that case based study of law generates 'censored' knowledge, which leads to ignorance. And of course ignorance always leads to belief what is not.

In this case based study of law one will be deprived of knowing the history behind the interpretation of law or rationale behind the application of a rule. For example many of us do not know the history as well as rationality of promulgating such a draconian Penal Code (1860) for Indians. Even, many of us do not know that the unofficial British citizens in the colonial India were enjoying indemnity for many offences described in the Penal Code.

I often come across another serious appeal for human rights based legal education (so far I can recall at least two essays had been published in this page). That brings serious concern in my mind that is our legal education producing animal who is not human being! [Khan (2012) popularises the idea that human beings are one of the revolutionary species of animal who can talk]. In that case we have to think twice of our present education system as a whole.

But do we know the other side of the coin? Have we ever thought of cultural and political domination which is embedded in the human rights movement? The problem is that we often interested in history; history tells the truth which, sometime, makes many of us discomfort.

Ours is 'black letter legal study' which includes reading legal texts, interpreting statutes and commenting on judgments of the superior court. Our legal education did not do justice, like my university teachers, to the legal history. Nor do they consider law as one of the species of social science and try to establish interrelation between them. What I mean is to necessity of the multifaceted approach in the legal education.

David Washbrook (1981) has called for reinterpretation of colonial laws by arguing that the objectives of the colonial laws were to extract revenue as well as establish political domination. Upendra Baxi, one of the Indian legal luminaries, too has done an extensive work on law and pattern of class power which leads to authoritarian application of the law.

Therefore, the goal of legal education should not be confined to produce lawyers only. Instead of, we have to consider law as one of the disciplines of social science and have to encourage inter-disciplinary legal education. A law graduate must know the economics, sociology, anthropology, political theory and so on to understand the nature of law. Lest we forget that these graduates will be the interpreter of the law tomorrow.

Perhaps, we can set the goal of our legal education to produce rebellious lawyers in the sense that the law graduates will question the application of the law; often the law itself.

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LAW WEEK

DCC polls not in 3-month: SC

The Supreme Court on April 19 upheld a High Court order that stayed for three months the procedure of holding the Dhaka City Corporation elections. With the dismissal, the elections to the bifurcated DCC will not be held in May 24 as was scheduled by the Election Commission. The seven-member bench of the Appellate Division headed by Chief Justice Md Muzammel Hossain passed the order dismissing a petition filed by a DCC mayoral candidate Tuhin Malik against the HC order. Earlier, on April 16, the HC in response to a writ petition stayed the DCC polls process as the procedure required for the elections has not been completed.- *The Daily Star online edition April 19 2012.*

HC issued rule about Sylhet-London Route

The High Court has issued a rule upon the authorities concerned to explain in 10 days why they should not be directed to launch the Sylhet-London-Sylhet flight of Bangladesh Biman further. It came up with the rule after hearing a writ petition filed by Advocate Manzill Murshid on behalf of Human Rights and Peace for Bangladesh (UK) Convenor Rahmat Ali on April 17. The HC bench of Justice AHM Shamsuddin Choudhury Manik and Justice Jahangir Hossain Selim also fixed May 3 for holding hearing on the rule. The civil aviation secretary and the board of directors of Bangladesh Biman have been made respondents to the rule. - *The Daily Star April 19 2012.*

HC rejected Destiny Plea

The High Court on April 17 rejected a writ petition filed by Destiny Multipurpose Cooperative Society Ltd challenging the Bangladesh Bank report that raised allegations against the company of illegal banking. The court termed the petition premature as the central bank has not taken any action against Destiny. Md Rafiqul Amin, chairman of the cooperative, on April 8 filed the writ petition seeking an HC stay order on the central bank report. The petition said the report was faulty and illegal since the BB had not followed due procedures while inspecting his company. The HC bench of Justice Farid Ahmed and Justice Sheikh Hassan Arif concluded hearing on the petition on April 11 and passed the rejection order on April 17.- *The Daily Star April 18 2012.*

HC stays 33rd BCS exam for 3 weeks

The High Court on April 16, in response to a writ petition, stayed for three weeks the process to hold the 33rd Bangladesh Civil Service (BCS) examinations, the preliminary test of which was scheduled to be held on June 1. Challenging the legality of Public Service Commission's (PSC) online circular, 20 exam candidates filed the petition on April 15, saying that they failed to get the admit card despite submitting the forms online and depositing the money on time. They said this occurred due to technical defect in the server of the Teletalk Company Ltd.- *The Daily Star April 17 2012.*

LAW ANALYSIS

Legal Aid Service: Balance of equality for the pauper people

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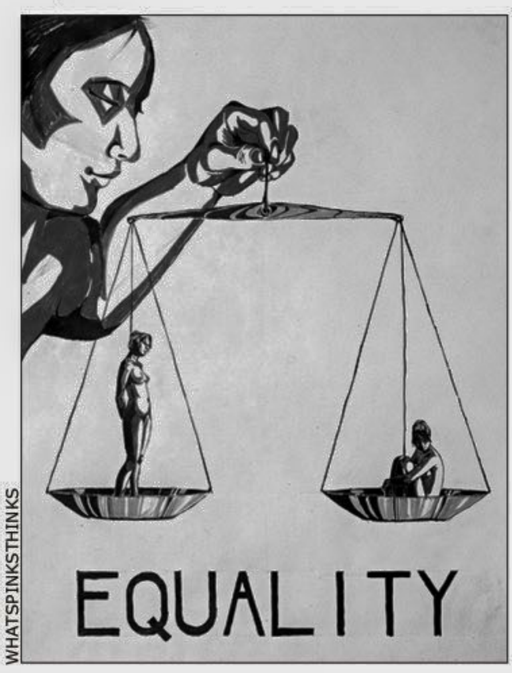
THE concepts of 'rule of law' 'equality before law', and 'equal protection of law' are safeguards for the citizen irrespective of caste, faith, social and pecuniary status. Regrettably, all citizens are not equally advantaged to get the benefits of law. The citizen of any country of the world is not enjoying fair justice due to pecuniary constraints and social inequality. The Constitution of Bangladesh has in clear terms recognized the basic fundamental human rights. One of the basic fundamental rights is that all are equal before law and are entitled to equal protection of law (Article 27 of the Constitution of the People's Republic of Bangladesh). Article 14 of the said constitution stipulates that it shall be the fundamental responsibility of the state to emancipate backward sections of the people from all forms of exploitation; Article 31(2) guarantees protection of law that the citizens and the residents of Bangladesh have the inalienable right to be treated in accordance with law; Article 35(3) ensures speedy and fair trial. A range of international documents have also been framed for the safeguard of these rights. Articles 7, 8 and 10 of the Universal Declaration of Human Rights1948, Article 14 of the International Covenant on Civil and Political Rights 1966, Articles 6 (1) and 20 (1) of the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms1995. Article 9 of the Arab Charter on Human Rights 1994, Article 3 of the African Charter on Human and People Rights 1981, Article 24 of the American Convention on Human Rights 1978.

For the following reasons, all these guarantees become worthless without providing any legal aid to the indigent persons. Firstly: In a suit where one party is poor and the other party is affluent, here equality, rule of law, and fair trail ensured in our constitution and other constitutions and documents of the world can not be maintained because the affluent party is able to appoint an expert advocate who can easily take the fruits of the suit in favor of his clients whereas the opposite advocate fails to do so. Secondly: access to justice is prevented for the poor by high legal costs, here costs include court fee, process fee, advocate fee, and other incidental costs. Thirdly: delay in disposal of a civil suit, in our country for the disposal of a civil suit several years are required, but poor litigants after struggling one or two years, lose their every thing and fail to move the suit. So the courts pronounce decree in favor of the strong party. Fourthly: a big number of people of the country are ignorant as to their rights. So without giving them any legal assistance, they can not ensure their rights. For this reason to give the pauper people legal assistance and ensure their rights the government has enacted the Legal Aid Services Act 2000 (LASA) ant it is amended in 1st December, 2011 which is a judiciary program, delivered at the District level (Bangladesh is divided into 64 Districts for administrative purposes) through a committee chaired by the District and Sessions judge (the highest position in the lower judiciary at the District level), under the central authority of a semi-autonomous body corporate, the National Legal Aid Organization (NLASO).

Who is entitled to apply for Legal Aid? In the Act, there is no reference as to the eligibility criteria to get a hold legal aid. Consequently, the Ministry of Law, Justice and Parliamentary Affairs formulated guidelines and rules like the Legal Aid Policy, 2001 under section 24 of the Legal Aid Service Act, 2000 to carry out the objectives of the Act. Rule 2 of the legal Aid Policy, 2001 spells out the following categories of persons as eligible for looking for legal aid; Freedom fighter who is incapable of earning or partially incapable of earning or whose yearly income is not above 75 thousand taka or who is without any employment. The person who is receiving old age honorarium; Poor women who is holder of VGF Card; Women and children who are victim of trafficking; Women and children who are acid-burnt by the miscreants; Any person who has been allocated land or house in an "ideal/model" village; widow, women deserted by her husband; Physically or mentally handicapped person who is incapable of earning and without means of subsistence; Person who is unable to establish his/her right to defend him/her in a Court of law due to financial crisis ; Any person who has been detained without trial and is incapable to defend himself due to financial crisis; Any person who is considered by the Court as poor or helpless; Any person who is recommended by the Jail authority as financially helpless or poor; Any other person who are considered by the Legal Aid Board from time to time due to the financial crisis or any other socio-economic reasons or disaster. In this policy, the phrase "poor and financially poor person" will be used to mean persons whose annual income is not above fifteen thousand taka.

Where and how to apply for legal aid? Section 16 of the said act spells out how to apply for legal Aid. As per this section all applications for in receipt of legal aid must be submitted to the National Board of Legal Aid or in appropriate cases to the District Legal Aid Committee. If an application is discarded by the District Committee and the person feels distressed by that verdict, then the applicant may have a preference an appeal to the National Legal Aid Board within 60 days of the pronouncement of the decision of the District Committee. Apart from the aforesaid provision, section 3 of the Legal Aid Regulations, 2001 provides broadly how to make an application for Legal Aid; The candidate shall apply, along with his Full name and address and the underlying causes for his application, in a white paper; if the application is made for legal aid for any matter in the Supreme Court, it is to be submitted to the Chairman of the organization, on the other hand, if it is for legal aid in any contract, it is to be made to the chairman of the District Committee; The application accepted by the committee is considered in its next meeting; If it is not possible for the committee to take decision based on the submitted information then the committee may require for further information; Once any application considered to have been accepted, the applicant litigant shall be informed in the prescribed manner.

On a careful analysis of the said act, regulation and policy some loopholes become apparent to us which are as follows, for example, the members of the committees are from upper strata so they often fail to realise the miseries of the penurious litigants. No remuneration for the members of the committee so they are reluctant to do



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these activities. The act does not specify criminal or civil cases for which legal aid can be provided. The responsibility of boards and committees are voluntary services and there is no accountability. There is no representation of poor people in the board or committee and hardly the present board/ committee can feel the gravity of situation. The directorate is unable to perform properly due to lack of manpower and other logistics. For these defects a poor litigant can not take the benefit of this Act. In conclusion I want to say that to ensure fundamental rights and rule of law for the poor litigants with the affluent litigants, government should immediately take effective and realistic steps and rearm the Legal Aid Services Act 2000 (LASA).

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